

Checklist: Issues to cover in an Auspice Agreement

Overview

It is difficult to provide a precedent (example) Auspice Agreement which will suit all organisations, as the terms will be highly dependent on the nature of the auspice arrangement that you wish to enter into. However the following table gives an indication of the kinds of issues that may be covered in a more comprehensive agreement, where both organisations work together on a project to be funded by a grant.

Note: The information contained in this fact sheet is intended as a guide only, and is not legal advice. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. The information in this fact sheet is written for people and organisations resident in, or affected by, the laws that apply in Victoria, Australia and is current at 1 October 2008.

Issues to consider

Your organisation may wish to check any agreement for the following clauses :

Clause in contract	Explanation	<input checked="" type="checkbox"/>
Term	It should be clear when the agreement starts and whether the commencement is conditional on any particular event occurring. The duration of the agreement should be specified.	<input type="checkbox"/>
Obligations of Auspiced Organisation	<p>The obligations of the Auspiced Organisation should be set out and may include:</p> <ul style="list-style-type: none"> ▶ a requirement to assist the Principal Organisation to secure adequate funding for the project or activities; ▶ securing insurances, providing financial records, references, etc. for the purposes of getting funding for the project; ▶ clauses about how the Auspiced Organisation will seek the release of funds from the Principal Organisation and account for the spending of those funds; ▶ the kind of reporting and documentation the Auspiced Organisation agrees to provide to the Principal Organisation (eg. progress reporting, financial reporting, copy of insurance policy); 	<input type="checkbox"/>

Clause in contract	Explanation	<input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> ▶ the extent to which the Auspiced Organisation will be responsible for securing premises, equipment, staff, any consents or licenses for the project; ▶ requirements to comply with any policies of the Principal Organisation or any restrictions placed on the Auspiced Organisation by the Principal Organisation for the duration of the agreement; and ▶ general requirements to co-operate with the Principal Organisation for the purposes of the project, which may include a clause that the Auspiced Organisation be prepared to undertake any reasonable act asked of it by the Principal Organisation. 	<input checked="" type="checkbox"/>
Obligations of Principal Organisation	<p>The obligations of the Principal Organisation should be set out and may include:</p> <ul style="list-style-type: none"> ▶ how funding will be applied for, kept (separate bank account) and administered; ▶ any support the Principal Organisation agrees to provide in terms of office space, equipment, software, etc.; ▶ the extent the Principal Organisation will commit staff (employee time) to the funded project and whether this will be paid from the funding or from the Principal's own funds); ▶ any accounting services the Principal Organisation will provide for the purposes of funding the project, administration of the project management account and preparing budgets and tracking against the budgets; ▶ the extent of the administrative, accounting, HR, fundraising and legal assistance that the Principal Organisation will supply. 	<input type="checkbox"/>
Funding and fees	<p>The auspice agreement should set out any fees to be paid and the amount (for example, any fee the Auspiced Organisation may have to pay the Principal Organisation a fee to cover its administration expenses.)</p> <p>Also, if the project for which the funding is sought generates fees / surplus, the agreement should set out whether the Principal Organisation shares in the fees / surplus.</p>	<input type="checkbox"/>

Clause in contract	Explanation	<input checked="" type="checkbox"/>
Non-completion of project	The agreement should include a clause which determines what will happen if the Auspiced Organisation does not complete the project or a stage of the project. The clause should set out in what circumstances the Principal Organisation is able to withhold funds and in what circumstances the Principal Organisation is able to use the funds to complete the project.	<input type="checkbox"/>
Recognition	The agreement may specify how both the Auspiced Organisation and the Principal Organisation will be recognised in relation to the funded project (promotion, branding, acknowledgements).	<input type="checkbox"/>
Notice	A notice clause will set out in what form and where notices are to be delivered to each party for the purposes of the auspice agreement.	<input type="checkbox"/>
Dispute resolution	<p>Due to the nature of the relationship between the Auspiced and the Principal Organisation it is often best to set out the dispute resolution procedures in detail, so that the relationship does not become unnecessarily adversarial in times of disagreement. You may wish to include a clause to indicate an intention that both parties will use their best efforts to resolve any disputes.</p> <p>The dispute resolution clause can set out alternative methods of dispute resolution and require that the parties use those methods in the first instance, rather than court proceedings. You will need to decide whether you want decisions made in these alternative methods to be binding.</p>	<input type="checkbox"/>
Termination	<p>Because an auspice agreement is a legally binding contract, you need to document when it can be brought to an end. Usually agreements are able to be terminated early if one party fails to fulfill its obligations and is not in a position to remedy this.</p> <p>You may decide that there are other circumstances in which you should be able to terminate the agreement. For example, if the Auspiced Organisation becomes incorporated after the commencement of the Agreement, you may no longer require the assistance of the Principal Organisation. Alternatively, you may both simply agree that it is appropriate for either party to terminate the agreement upon reasonable notice. Of course, this may not be appropriate if you are co-operating on a discrete project.</p>	<input type="checkbox"/>

Clause in contract	Explanation	<input checked="" type="checkbox"/>
Obligations after termination	<p>The agreement should also set out the parties' obligations after the agreement comes to an end (either because the term has ended or due to termination).</p> <p>The parties will need to think about things such as payment of any outstanding amounts, confidential information and what is to happen to any remaining grant money.</p> <p>If the parties are working on a project together, you may like to consider who will bear the burden of any unfinished work</p>	<input type="checkbox"/>
Confidentiality	<p>It is likely that both parties will be privy to confidential information of the other. For this reason, you should agree and document how each party (and their employees, volunteers and contractors) may (or may not) deal with such information.</p>	<input type="checkbox"/>
Intellectual property	<p>A clause dealing with who owns the intellectual property in the funded project should be included. For more information about Intellectual Property rights and the law see the Related PilchConnect Fact Sheets section at the end of this document.</p>	<input type="checkbox"/>
Liability, insurance and indemnities	<p>The agreement should make it clear:</p> <ul style="list-style-type: none"> ▶ who is responsible for any loss or damage to any third (outside) party caused by any activity undertaken in the course of the agreement; ▶ whether one party agrees to (wholly or partly) indemnify or compensate the other party for any costs or liabilities associated with the agreement; and ▶ whether insurance is required and which party is required to take out appropriate insurances. 	<input type="checkbox"/>
Any employee obligations (tax, super, insurance, entitlements)	<p>If the project for which funding is sought (under the auspicing agreement) will involve hiring employees, the agreement should specify who is responsible for hiring, and who arranges and pays the employees' legal entitlements.</p>	<input type="checkbox"/>

This list is not exhaustive, and if in doubt, you should seek legal advice about any agreement your organisation intends to sign.

Related resources

Related PilchConnect Fact Sheets

Checklist: Issues to consider before signing an agreement with another organisation

Quick Guide: Intellectual property for community organisations

Related links

For online legal information resources for Victorian community organisations about:

- ▶ working with other organisations, see www.pilch.org.au/workingwithothers
- ▶ tax see www.pilch.org.au/tax
- ▶ insurance see www.pilch.org.au/insurance
- ▶ intellectual property see www.pilch.org.au/IP
- ▶ employee entitlements see www.pilch.org.au/employees